
HOUSE BILL 3161

State of Washington

60th Legislature

2008 Regular Session

By Representatives Smith, O'Brien, McDonald, McCune, Takko, Pearson, Bailey, Ahern, Herrera, Kristiansen, Haler, Warnick, Schindler, Sump, Orcutt, Kretz, Walsh, Hasegawa, Jarrett, Roach, Williams, Simpson, Morrell, Rodne, Kelley, Dunn, and Hurst

Read first time 01/23/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to requiring certain sex offenders to pay the costs
2 of electronic monitoring; amending RCW 9.94A.713; and reenacting and
3 amending RCW 9.94A.715.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.713 and 2006 c 130 s 1 are each amended to read
6 as follows:

7 (1) When an offender is sentenced under RCW 9.94A.712, the
8 department shall assess the offender's risk of recidivism and shall
9 recommend to the board any additional or modified conditions of the
10 offender's community custody based upon the risk to community safety.
11 In addition, the department shall make a recommendation with regard to,
12 and the board may require the offender to participate in,
13 rehabilitative programs, or otherwise perform affirmative conduct, and
14 obey all laws. The department may recommend and, if recommended, the
15 board may impose electronic monitoring as a condition of community
16 custody for the offender. Within the resources made available by the
17 department for this purpose, the department shall carry out any
18 monitoring imposed under this section using the most appropriate
19 technology given the individual circumstances of the offender. The

1 board shall recover the costs of the electronic monitoring from the
2 offender to the extent that the board determines the offender is
3 financially able. As used in this section, "electronic monitoring"
4 means the monitoring of an offender using an electronic offender
5 tracking system including, but not limited to, a system using radio
6 frequency or active or passive global positioning technology. The
7 board must consider and may impose department-recommended conditions.

8 (2) The department may not recommend and the board may not impose
9 conditions that are contrary to those ordered by the court and may not
10 contravene or decrease court-imposed conditions. The board shall
11 notify the offender in writing of any such conditions or modifications.

12 (3) In setting, modifying, and enforcing conditions of community
13 custody, the department shall be deemed to be performing a quasi-
14 judicial function.

15 (4) If an offender violates conditions imposed by the court, the
16 department, or the board during community custody, the board or the
17 department may transfer the offender to a more restrictive confinement
18 status and impose other available sanctions as provided in RCW
19 9.95.435.

20 (5) By the close of the next business day, after receiving notice
21 of a condition imposed by the board or the department, an offender may
22 request an administrative hearing under rules adopted by the board.
23 The condition shall remain in effect unless the hearing examiner finds
24 that it is not reasonably related to any of the following:

- 25 (a) The crime of conviction;
- 26 (b) The offender's risk of reoffending; or
- 27 (c) The safety of the community.

28 (6) An offender released by the board under RCW 9.95.420 shall be
29 subject to the supervision of the department until the expiration of
30 the maximum term of the sentence. The department shall monitor the
31 offender's compliance with conditions of community custody imposed by
32 the court, department, or board, and promptly report any violations to
33 the board. Any violation of conditions of community custody
34 established or modified by the board shall be subject to the provisions
35 of RCW 9.95.425 through 9.95.440.

36 (7) If the department finds that an emergency exists requiring the
37 immediate imposition of conditions of release in addition to those set
38 by the board under RCW 9.95.420 and subsection (1) of this section in

1 order to prevent the offender from committing a crime, the department
2 may impose additional conditions. The department may not impose
3 conditions that are contrary to those set by the board or the court and
4 may not contravene or decrease court-imposed or board-imposed
5 conditions. Conditions imposed under this subsection shall take effect
6 immediately after notice to the offender by personal service, but shall
7 not remain in effect longer than seven working days unless approved by
8 the board under subsection (1) of this section within seven working
9 days.

10 **Sec. 2.** RCW 9.94A.715 and 2006 c 130 s 2 and 2006 c 128 s 5 are
11 each reenacted and amended to read as follows:

12 (1) When a court sentences a person to the custody of the
13 department for a sex offense not sentenced under RCW 9.94A.712, a
14 violent offense, any crime against persons under RCW 9.94A.411(2), or
15 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
16 after July 1, 2000, or when a court sentences a person to a term of
17 confinement of one year or less for a violation of RCW
18 9A.44.130(~~(+10+)~~) (11)(a) committed on or after June 7, 2006, the court
19 shall in addition to the other terms of the sentence, sentence the
20 offender to community custody for the community custody range
21 established under RCW 9.94A.850 or up to the period of earned release
22 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.
23 The community custody shall begin: (a) Upon completion of the term of
24 confinement; (b) at such time as the offender is transferred to
25 community custody in lieu of earned release in accordance with RCW
26 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under
27 RCW 9.94A.660, upon failure to complete or administrative termination
28 from the special drug offender sentencing alternative program. Except
29 as provided in RCW 9.94A.501, the department shall supervise any
30 sentence of community custody imposed under this section.

31 (2)(a) Unless a condition is waived by the court, the conditions of
32 community custody shall include those provided for in RCW 9.94A.700(4).
33 The conditions may also include those provided for in RCW 9.94A.700(5).
34 The court may also order the offender to participate in rehabilitative
35 programs or otherwise perform affirmative conduct reasonably related to
36 the circumstances of the offense, the offender's risk of reoffending,

1 or the safety of the community, and the department shall enforce such
2 conditions pursuant to subsection (6) of this section.

3 (b) As part of any sentence that includes a term of community
4 custody imposed under this subsection, the court shall also require the
5 offender to comply with any conditions imposed by the department under
6 RCW 9.94A.720. The department shall assess the offender's risk of
7 reoffense and may establish and modify additional conditions of the
8 offender's community custody based upon the risk to community safety.
9 In addition, the department may require the offender to participate in
10 rehabilitative programs, or otherwise perform affirmative conduct, and
11 to obey all laws. The department may impose electronic monitoring as
12 a condition of community custody for an offender sentenced to a term of
13 community custody under this section pursuant to a conviction for a sex
14 offense. Within the resources made available by the department for
15 this purpose, the department shall carry out any electronic monitoring
16 imposed under this section using the most appropriate technology given
17 the individual circumstances of the offender. The department shall
18 recover the costs of the electronic monitoring from the offender to the
19 extent that the department determines the offender is financially able.

20 As used in this section, "electronic monitoring" means the monitoring
21 of an offender using an electronic offender tracking system including,
22 but not limited to, a system using radio frequency or active or passive
23 global positioning system technology.

24 (c) The department may not impose conditions that are contrary to
25 those ordered by the court and may not contravene or decrease court
26 imposed conditions. The department shall notify the offender in
27 writing of any such conditions or modifications. In setting,
28 modifying, and enforcing conditions of community custody, the
29 department shall be deemed to be performing a quasi-judicial function.

30 (3) If an offender violates conditions imposed by the court or the
31 department pursuant to this section during community custody, the
32 department may transfer the offender to a more restrictive confinement
33 status and impose other available sanctions as provided in RCW
34 9.94A.737 and 9.94A.740.

35 (4) Except for terms of community custody under RCW 9.94A.670, the
36 department shall discharge the offender from community custody on a
37 date determined by the department, which the department may modify,

1 based on risk and performance of the offender, within the range or at
2 the end of the period of earned release, whichever is later.

3 (5) At any time prior to the completion or termination of a sex
4 offender's term of community custody, if the court finds that public
5 safety would be enhanced, the court may impose and enforce an order
6 extending any or all of the conditions imposed pursuant to this section
7 for a period up to the maximum allowable sentence for the crime as it
8 is classified in chapter 9A.20 RCW, regardless of the expiration of the
9 offender's term of community custody. If a violation of a condition
10 extended under this subsection occurs after the expiration of the
11 offender's term of community custody, it shall be deemed a violation of
12 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
13 contempt of court as provided for in RCW 7.21.040. If the court
14 extends a condition beyond the expiration of the term of community
15 custody, the department is not responsible for supervision of the
16 offender's compliance with the condition.

17 (6) Within the funds available for community custody, the
18 department shall determine conditions and duration of community custody
19 on the basis of risk to community safety, and shall supervise offenders
20 during community custody on the basis of risk to community safety and
21 conditions imposed by the court. The secretary shall adopt rules to
22 implement the provisions of this subsection.

23 (7) By the close of the next business day after receiving notice of
24 a condition imposed or modified by the department, an offender may
25 request an administrative review under rules adopted by the department.
26 The condition shall remain in effect unless the reviewing officer finds
27 that it is not reasonably related to any of the following: (a) The
28 crime of conviction; (b) the offender's risk of reoffending; or (c) the
29 safety of the community.

--- END ---